

**CALENDAR ITEM
C87**

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04/20/17

WP 5736

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**CONSIDER DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO ENTER
INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA
STATE LANDS COMMISSION AND C.S. LAND, INC., FOR COOPERATIVE
EFFORTS RELATED TO THE REMEDIATION AND CONTROL OF CONTAMINATION
AT THE SELBY SLAG SITE, CONTRA COSTA COUNTY**

PARTIES:

California State Lands Commission

C.S. Land, Inc.

BACKGROUND:

The Selby Slag Site (Site) consists of about 66 acres located in unincorporated Contra Costa County, California, approximately 2 miles northeast of Rodeo, California, and approximately 2 miles west of Crockett, California. The Site is situated adjacent to the southern shoreline of the San Pablo Bay and the Carquinez Strait. The Site consists of two parcels of property, one owned by the State of California (State) and the other privately owned by C.S. Land, Inc. (C.S. Land). The California Department of Toxic Substances Control (DTSC) is providing oversight of the remediation and containment of contamination at the Site, and is acting as lead agency for California Environmental Quality Act (CEQA) review.

In approximately 1886, Thomas Selby or his firm, the Selby Smelting & Refining Company, constructed a lead smelting facility at the Site. A subsidiary of the American Smelting and Refining Company, Inc., (ASARCO) acquired Selby's firm and assumed operation of the smelter. ASARCO subsequently expanded the smelting operation to include copper smelting and gold extraction. During the historic smelting operations, slag material, a waste product created from separating metals from ore during the smelting process, was deposited on the Site in the onshore and tidal areas.

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Beginning in the late 1940s, the State, apparently unaware of the toxic character of the smelter slag, negotiated leases of tidelands to ASARCO and its predecessors that directed placement of the remnant smelter slag on and into State-owned land. In 1977, Wickland Oil Terminals and Wickland Oil Company (Wickland) purchased ASARCO's parcel, and in 1981 Wickland leased the adjacent State-owned parcel from the Commission. In 1983 Wickland, sued ASARCO and the Commission under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Wickland, ASARCO, and the Commission resolved the lawsuit through a consent judgment.

Under Consent Judgment No. C-83-5906-SC issued by the U.S. District Court in 1989, ASARCO, the Commission, and Wickland are responsible for remediation of the Site. C.S. Land has assumed Wickland's obligations under the Consent Judgment. The Consent Judgment allocated responsibilities equally between the three parties for certain interim remedial measures, which have all been completed. For the final remedial measures, the Commission is allocated a 38 percent responsibility, ASARCO has a 42 percent share and C.S. Land has a 20 percent share.

In 2003, the Commission entered into a Memorandum of Understanding with C.S. Land and ASARCO to address rights and responsibilities concerning remedial measures on the Site.

ASARCO declared bankruptcy in 2005 and settled its environmental liability for the Site in 2008 through a settlement agreement with DTSC, the Commission, and C.S. Land. The bankruptcy court awarded DTSC approximately \$40 million of ASARCO's funds to pay for ASARCO's share of the remediation costs. ASARCO's bankruptcy also terminated the 2003 Memorandum of Understanding.

The Commission and C.S. Land have been working with DTSC to complete an Environmental Impact Report and Remediation Action Plan for the Site. As the project transitions from conceptual planning to design and implementation, C.S. Land proposes to hire a project manager to provide project management services related to the successful implementation of the Remedial Action Plan, including but not limited to: coordinating interested parties, developing strategies for project design and construction, and facilitating bidding processes. C.S. Land also proposes to enter into a new Memorandum of Understanding with the Commission to address the rights and responsibilities concerning the Site and to provide for joint oversight and decision-making authority over the implementation of the project manager contract and all future consultant contracts.

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PROPOSED MEMORANDUM OF UNDERSTANDING:

The proposed Memorandum of Understanding would formally acknowledge the Commission's and C.S. Land's cooperative efforts related to the remediation and control of contamination at the Site; provide that the Commission and C.S. Land may jointly control project-wide management services; establish provisions related to the confidentiality of certain information developed or shared between the parties; and control and direct the parties' joint prosecution or defense of claims.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6106, 6216, and 6301.

Public Trust and State's Best Interests Analysis:

The Memorandum of Understanding would promote efforts to preserve public health and safety over sovereign land, and render the land suitable for Public Trust purposes such as such as navigation and maritime commerce. It will also protect adjoining Public Trust lands and resources by preventing the spread of contamination. Establishing a cost-sharing structure in accordance with the Consent Judgment ensures that the remediation process will proceed smoothly. Coordination between C.S. Land and the Commission for project manager services will increase the cost-effectiveness and efficiency of contracting for, designing, and implementing the remediation work on the Site.

Based on the above analysis, staff believes authorization of the Memorandum of Understanding is consistent with the common law Public Trust Doctrine and in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction, and more specifically with Key Action 1.1.4 to Identify and abate hazards and associated liability on sovereign and school lands.
2. The authorization to enter into a Memorandum of Understanding is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

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Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed Memorandum of Understanding is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

AUTHORIZATION:

1. Authorize the Executive Officer or her designee to enter into and take all actions reasonably necessary to implement a Memorandum of Understanding, in a form substantially similar to that now on file in the offices of the Commission, with C.S. Land, Inc., for cooperative efforts related to the remediation and control of contamination at the Selby Slag Site.
2. Authorize the Executive Officer or her designee to take all actions reasonably necessary and appropriate related to providing joint oversight of and direction to the project manager for remediation and control of contamination at the Selby Slag Site.